

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number: EB-09-NY-0318
	)	
Vicot Chery	)	NAL/Acct. No: 201132380002
	)	
Spring Valley, New York	)	FRN: 0019471259
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: October 21, 2010

Released: October 22, 2010

By the District Director, New York Office, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Vicot Chery (“Chery”) apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 90.5 MHz in Spring Valley, New York. We conclude, pursuant to section 503(b) of the Act,<sup>2</sup> that Chery is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On October 26, 28, and 29, 2009, in response to a complaint, agents from the Enforcement Bureau’s New York Office (“New York Office”) monitored the frequency 90.5 MHz in Spring Valley, New York.<sup>3</sup> On each of those days, the agents observed a radio signal on 90.5 MHz and used direction-finding techniques to locate the source of the transmissions to 301 Roosevelt Avenue in Spring Valley, New York. The agents also took field strength measurements on each of the three days and determined that the signal being broadcast exceeded the limits for operation under Part 15 of the Commission’s rules (“Rules”)<sup>4</sup> and therefore required a license. A review of the Commission’s records revealed that there was no FCC authorization to operate a radio station on 90.5 MHz at this location in Spring Valley, New York.

3. After completing the field strength measurements on October 29, 2009, the agents entered 301 Roosevelt Avenue where two businesses were located – P.C. Taxi Services, LLC (“P.C. Taxi”) and P.C. Auto Repair, Inc. (“P.C. Auto”). The agents proceeded to the offices of P.C. Taxi and spoke to the dispatcher regarding the unauthorized transmissions. The dispatcher said she would contact

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> A listener of non-commercial educational FM station WFUV, located at Fordham University in Bronx, New York, filed a complaint alleging interference from an illegal broadcast station operating on 90.5 MHz in Spring Valley, New York.

<sup>4</sup> Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 micro volts per meter (“µV/m”) at three meters. 47 C.F.R. § 15.239. Measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed Part 15 transmitter.

Chery, who she identified as the owner of P.C. Taxi.<sup>5</sup> Subsequently, Chery arrived at 301 Roosevelt Avenue and the agents asked him about the unauthorized transmissions and asked to inspect the station. In response, Chery led the agents to an adjacent room at the P.C. Taxi location where the agents observed a radio station in operation. Next, Chery led the agents to the roof where the FM broadcast antenna for the station was located. Finally, Chery led the agents to the upstairs attic where the station's transmitter was located behind a stack of car tires and hidden from plain view. Chery told the agents that he was allowing a friend to use the space to operate the station. At the agents' request, Chery turned off the transmitter and the operation ceased. He also agreed to remove the antenna.<sup>6</sup>

4. On November 4, 2009, the New York Office issued a *Notice of Unlicensed Operation* ("NOUO"), to Chery for unlicensed operation on 90.5 MHz in Spring Valley, New York. The New York Office received a reply to the NOUO on behalf of Chery.<sup>7</sup> Notwithstanding Chery's actions during the inspection, in the *NOUO Response*, Chery's attorney asserts that Chery "had no knowledge of the events which you have charged him with." The attorney goes on to state that during the two months prior to the agents' inspection, Chery had allowed an unspecified person to use the space in his businesses where the radio station was located. To date, Chery has not provided the agents his friend's name.

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>8</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

6. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>10</sup> For the purposes of section 301, the word "operate" has been interpreted to mean "the general conduct or management of a station as a whole, as distinct from the specific technical work involved in the actual transmission of

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<sup>5</sup> Agents determined that Vicot Chery is the owner and operator of P.C. Taxi and P.C. Auto Repair.

<sup>6</sup> During the inspection at the P.C. Taxi location on October 29, 2009, agents also determined that P.C. Taxi was operating the base station for its private land mobile station (call sign WPSY573) from an unauthorized location. The New York Office issued a Notice of Violation to P.C. Taxi. See *P.C. Taxi Services, LLC*, Notice of Violation, V201032380001, released November 5, 2009.

<sup>7</sup> See Letter from Mitchell P. Schecter, Counsel for Vicot Chery, to Gary Barker, New York Office, Northeast Region, Enforcement Bureau, dated November 12, 2009 ("*NOUO Response*").

<sup>8</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>10</sup> 47 U.S.C. § 301.

signals.”<sup>11</sup> In other words, the use of the word “operate” in section 301 of the Act captures not just the “actual, mechanical manipulation of radio apparatus”<sup>12</sup> but also operation of a radio station generally.<sup>13</sup> To determine whether an individual is involved in the general conduct or management of the station, we can consider whether such individual exercises control over the station, which the Commission has defined to include “. . . any means of actual working control over the operation of the [station] in whatever manner exercised.”<sup>14</sup> The agents determined that, on October 26, 28, and 29, 2009, an unlicensed radio station was operating on 90.5 MHz from 301 Roosevelt Avenue in Spring Valley, New York within a building leased by Chery for the operation of his businesses. As discussed more fully below, we find that Chery is apparently liable for operating the unlicensed radio station on 90.5 MHz because he demonstrated control over the management of the station as a whole.

7. Together, the facts show that Chery had control of the station and was involved in the general conduct or management of the station. When asked about the unauthorized transmissions during the inspection on October 29, 2009, Chery immediately led the agents to a locked room at the P.C. Taxi location, which Chery owns and operates. Chery unlocked the room and the agents observed the radio station in operation. Chery also showed the agents the station’s transmitter and was able to turn it off when asked to do so by the agents. Further, Chery took the agents to the roof of the building where the station’s antenna was located and agreed to remove the antenna from the roof top. The fact that someone else also may have been involved in the station’s operation does not make Chery any less of a participant in the station’s operation. We have previously held that, because section 301 of the Act provides that “no person shall use or operate”<sup>15</sup> radio transmission equipment, liability for unlicensed operation may be assigned to any individual taking part in the operation of the unlicensed station, regardless of who else may be responsible for the operation.<sup>16</sup> Based on the evidence before us, we find that Chery apparently willfully and repeatedly violated section 301 of the Act by operating a radio station on 90.5 MHz in Spring Valley, New York without the requisite Commission authorization.

8. Pursuant to the *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.<sup>17</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>18</sup> Applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Vicot Chery is apparently liable for a forfeiture in the amount of \$10,000.

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<sup>11</sup> See *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (Comparing the use of the words “operate” and “operation” in sections 301, 307, and 318 of the Act and concluding that the word “operate” as used in section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* See also 47 U.S.C. § 307(c)(1).

<sup>14</sup> See *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd 9712, 9747 (1995), *recon. denied*, *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997).

<sup>15</sup> 47 U.S.C. § 301.

<sup>16</sup> *Jean L. Senatus*, Forfeiture Order, 20 FCC Rcd 14418 at para. 11 (Enf. Bur. 2005).

<sup>17</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E).

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, and 1.80 of the Rules, Vicot Chery is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act.<sup>19</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Vicot Chery **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, check, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Vicot Chery shall also send electronic notification to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov) on the date said payment is made.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, New York Office, 201 Varick Street, Suite 1151, New York, NY 10014, and must include the NAL/Acct. No. referenced in the caption. The statement shall also be emailed to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>19</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

14. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Vicot Chery at his address of record and to counsel for Vicot Chery at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel  
District Director  
New York Office  
Northeast Region  
Enforcement Bureau